IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1315 OF 2002

1. M/s Birdy Holding Pvt. Ltd.
and Anr. ...Appellants.

V/s

1. M/s. Geekay Exim (India) Ltd.
and Anr. ...Respondents.

Mr. S.M. Kable, advocate for the appellants.

None appears for respondent No.1, though served.

Mr. A.S. Shitole for the State.

CORAM: V.M.KANADE,J.
DATE: 16th February, 2005

P.C.

1. Heard the learned Counsel appearing for the appellant. None appears for respondent No.1 though served.

2. Leave granted.

3. Appeal is taken up for hearing forthwith.

4. The appellant has preferred this appeal challenging the judgment and order passed by the Additional Chief Metropolitan Magistrate 38th Court, Ballard Pier, Mumbai dated 6/8/2001. By the said order, the Trial Court was pleased to dismiss the complaint for default for want of service of summons

to accused Nos. 2 and 3 and for want of prosecution.

5. The learned Counsel appearing on behalf of the appellant submits that there was some confusion in the mind of the appellant and his counsel regarding the next date of hearing and that, according to the appellant and his advocate, the case was fixed for hearing on 27/08/2001. However, on the said date the matter did not appear on Board and, therefore, the advocate of the appellant took search of the record and proceedings and it transpired that on 06/08/2001, the case was called out and was dismissed for default. It is further submitted that the respondents were evading the service and, therefore, the appellant was not in a position to serve the summons on the respondents.

6. Considering the facts and circumstances of the case, the impugned order dated 06/08/2001 passed by the Additional Chief Metropolitan Magistrate is quashed and set aside. The complaint is restored to the file. The appellant is directed to serve the respondents the summons as expeditiously as possible. After service of summons, the Trial Court is directed to decide the complaint in an expeditious manner.

7. Appeal is allowed in the above terms.

8. All concerned to act on the copy of this order duly authenticated by the registry.

(V.M. KANADE, J.)